IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.288 of 2000

Date of decision : August 23, 2007

State of H.P. **...Appellant.**

Versus

Kuldip Chand **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondent : Mr. Vivek Thakur, Advocate.

Surjit Singh, Judge(Oral)

Respondent was sent up for trial for assaulting a widow serving as a servant with PW-5 Tara Chand with intent to outrage her modesty.

2. According to the prosecution, when the prosecutrix was returning to her employer's place after grazing his goats, in the evening on 6.4.1996, the respondent, who was over-drunk, caught her by her breasts and declared that the zip of his pants was open and she had a chance to enjoy sex with him. When the prosecutrix put up resistance, the respondent manhandled her. He tried to snatch the *Darat*, which the prosecutrix was carrying, and in that process index finger of her right hand was injured. The matter was reported to the police on the same day around 10 in the night. Next day at 11.45 a.m., the prosecutrix was got medically examined. A cut injury,

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Whether reporters of the local papers may be allowed to see the judgment?

caused by means of a sharp edged weapon, was noticed on the first phalanx of her right index finger.

3. Respondent was tried for offences punishable under Sections 354, 323, 341 and 506 of the Indian Penal Code. Trial Court acquitted him holding that the statement of the prosecutrix is not corroborated by PW-4 Chuni Lal, who allegedly came to her rescue on hearing the alarm raised by her, and the other witnesses, who were attracted to the scene by her alarm, namely Prem Lal and Kamlesh, had not been examined by the prosecution.

4. I have heard the learned Additional Advocate General as also the learned counsel for the respondent.

5. It is true that PW-4 Chuni Lal did not corroborate the testimony of the prosecutrix but no cogent reason has been given by the trial Court for disbelieving the prosecutrix. The prosecutrix appeared as PW-1 and testified the facts disclosed by her to the police at the time of lodging the FIR Ex. PW-1/A. Thus, the FIR corroborates her testimony. She was also got medically examined by the police during the investigation of the case. Her medico legal certificate Ex. PW-6/C proves that she had an incised wound on the first phalanx of her right index finger, the duration of which was 8 to 24 hours. She was examined on the next following day at 11.45 a.m. that is to say about 18 hours after the incident. Thus, the medico legal report also corroborates her testimony.

6. Nothing has come in the evidence on record suggesting that the prosecutrix had any motive to falsely implicate the respondent. No doubt, PW-4 Chuni Lal did not support the prosecution version but that could not have been a reason for disbelieving the prosecutrix, especially when her testimony inspires

confidence and is corroborated by the earliest version given by her to the police in the form of FIR Ex. PW-1/A and also by the medico legal report Ex. PW-6/C. Trial Court has observed that PW-2 Prem Singh, who was allegedly attracted to the scene by the cries of the prosecutrix, has also not corroborated her version. In fact PW-2 is not named as an eye-witness by the prosecutrix. It is one Prem Lal, who is named as an eye-witness and he was not examined by the prosecution. PW-2 was a witness of seizure of *Darat* only. Non-examination of Prem Lal and Kamlesh should also not make any difference when the testimony of the prosecutrix inspires confidence, as noticed hereinabove, and is corroborated by the FIR and the medico legal report.

7. Learned counsel for the appellant has submitted that the prosecutrix is not a lady of good character, as she had been living with Tara Chand as his wife. The submission made by the learned counsel amounts to adding insult to the injury. If the prosecutrix had been living with Tara Chand as his wife that did not give a license to the respondent or for that matter to any person to attempt to make her a target of his sexual lust.

8. In view of the abovestated position, the finding recorded by the trial Court cannot be said to be supported by the evidence on record. The same is perverse. Hence, appeal is accepted, the judgment of the trial Court is set aside and the respondent is convicted of the offence punishable under Section 354 of the Indian Penal Code. He be produced in person for being heard on the question of quantum of sentence.

List on 12th September, 2007.

August 23, 2007(sd) **(Surjit Singh), J**

Cr.A. No. 288 of 2000

12.9.2007 Present: Mr. D.S. Nainta, Dy. A.G. for the appellant - State

Mr. Vivek Thakur, Advocate, for the respondent, with Respondent / convict Kuldip Chand in person.

The respondent / convict has been heard on the question of quantum of sentence. His plea is that he is the sole bread-winner in the family and has three small kids to maintain, besides other members of the family.

Looking to the facts and circumstances of the case and the nature of the offence committed by the convict, I do not think he is entitled to the benefit of probation. The offence committed by him is of serious nature. Of late there has been increase in the incidence of crime involving sexual assault on women and with a view to deterring the people with propensity to commit this type of offences, it is desirable that exemplary punishment is meted out. Accordingly, the respondent is sentenced to undergo rigorous imprisonment for a period of one year and to a fine of Rs.500/-; in default of payment of fine to undergo simple imprisonment for a further period of one month. Cr.M.P. No. 426 of 2007 stands disposed of.

Copy of the judgment, duly authenticated by the Court Secretary, be supplied to the convict free of cost today.

September 12, 2007 (BC) **(Surjit Singh)**
Judge